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EXAMINER

KEENAN, JAMES W

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 12/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



Art Unit: 3652

1. Newly submitted claims 20-24 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19, drawn to a cantilever liftgate, classified in class 414, subclass 557.
- II. Claims 20-24, drawn to a method, classified in class 414, subclass 812.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be used to practice a process in which the liftgate platform is attached to the lift frame at more than one end.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 20-24 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

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2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 9/6/02 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2, 12, and 15-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, the recitation that the liftgate is “assembled and detached from a vehicle for shipping or testing” sets forth no structural limitation and thus the claim has no apparent patentable distinction relative to claim 1 from which it depends.

Similarly, in claim 12, the recitation that “the vehicle body assembly is detached from the vehicle” is unclear and sets forth no apparent structural limitation.

In claims 15-19, the scope is unclear in that the preamble is directed to a “liftgate” but the body of the claims positively recites a vehicle body structure and components thereof. It is therefore not known whether the scope of the invention includes the vehicle body as well as the liftgate.

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 6, 10-11, and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Dunlop et al (US 5,641,262).

Dunlop et al show a cantilever liftgate comprising side plates 3A, 3B, extension plate 5A, 5B, hydraulically driven lift frame 81 pivotally attached to the side plates via parallelogram linkage assembly 35, 37, and liftgate platform 87 rotatably attached to the lift frame, wherein the liftgate is secured only to the vehicle body via brackets 7A, 7B in a fully assembled state, as shown in figures 5A-C.

Re claim 4, absent any structural limitations, the tops 17A, 17B of the side plates are considered to be “formed steps”, or certainly could be used as such.

Similarly, re claim 6, the lower rear edges of the side plates are considered to comprise “dock impact bumpers”.

Re claims 13-14, see figure 6.

7. Claims 1-3 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Nilson (US 2,732,960).

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Note side plates 20, extension plate 48, lift frame 24, 29, platform 26, and channels 18 which are attached only to the vehicle body. Also note col. 3, lines 17-18, which state that the lift frame can be hydraulically driven.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5, 7-9, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunlop et al.

Dunlop et al do not show the side plates to include brackets for the hydraulic pump or lights, or for the lift frame to include a tube functioning as an underride guard. It is noted, however, that the extension plate includes brackets for the pump (figure 4) as well as lights (figures 5A-B), and that the liftgate could be “scaled up for use on larger trucks” (col. 5, lines 28-29), in which underride guards are required.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Dunlop et al by mounting or incorporating brackets for the pump and lights into the side plates instead of the extension plate, as this would simply be an alternate equivalent design expediency. Furthermore, it would have also been an obvious design

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expediency to have incorporated into the lift frame a tube functioning as an underride guard, particularly if the liftgate was scaled for a larger truck, as this would simply be the addition of a safety requirement.

Re claim 9, although no specific structure is shown for stacking the liftgates, it is considered an obvious design expediency to have included nesting upper and lower stacking members to enable the liftgates to be more conveniently shipped.

10. Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortenson

(US 4,078,676 in view of Dunlop et al.

Mortenson shows a liftgate for securement to a vehicle body including side plates 14, trunnion tube 16, extension plate 46 which can be welded to the truck body, a lift frame having parallelogram linkages 20 with upper and lower arms and lift frame tube 44, liftgate platform 28 with "stop" 48, as broadly claimed, which prevents movement of the platform past a horizontal orientation parallel with the vehicle body (figure 3), and hydraulic cylinder 42 which raises the liftgate platform from a lowered (fig. 4) to a raised (fig. 3) position while maintaining the platform horizontal when the platform is placed in a horizontal orientation, and which raises and inverts the platform into a storage position (fig. 8) when the platform is rotated to a lower vertical position (fig. 5).

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Mortenson does not show the side plates secured to the vehicle body. Mortenson also does not show a single hydraulic cylinder secured to the trunnion tube at one end and to the lift frame tube at the other end, instead utilizing two cylinders.

As noted above, Dunlop et al show the side plates of the liftgate secured to the vehicle body. Note also in the background section that the use of either a single central hydraulic cylinder or two outer hydraulic cylinders are known in the art as alternate equivalents.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Mortenson by attaching the side plates to the vehicle body rather than the frame, as Dunlop et al suggests doing so in a similar environment, and by utilizing a single central hydraulic cylinder in place of the two outer cylinders, as this is disclosed by Dunlop et al to be an alternate equivalent design choice. To have secured one end of such a cylinder to the trunnion tube and the other end to the lift frame tube would logically follow as a design expediency.

Re claims 16-17, attaching the liftgate to particular portions of the vehicle body is considered an obvious choice of design, particularly since it is not clear if such recitations present structural limitations, as noted above in paragraph 4.

11. Applicant's arguments filed 9/6/02 have been fully considered but they are not persuasive. Applicant argues that Dunlop et al and Nilson do not show cantilever liftgates, asserting that "a cantilever liftgate platform is supported at one end only". Both references clearly show

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cantilevered liftgates. The claims do not require the platform to be cantilevered from the frame; they merely require the liftgate in general to be cantilevered.

Applicant argues regarding the obviousness rejection based on Mortenson and Dunlop et al that Dunlop et al is designed for pick-up trucks and does not make up for the deficiencies of Mortenson relating to the frame of the liftgate being attached to the vehicle body. However, Dunlop et al clearly does relate to the liftgate being attached to the vehicle, and, as noted above, even suggests that the apparatus could be scaled up for use on larger trucks.

12. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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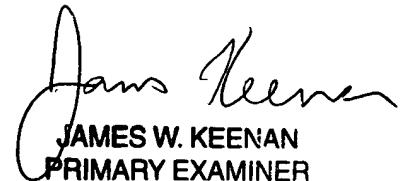
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is (703) 308-2559.

The fax phone number for the organization where this application or proceeding is assigned is 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1113.

jwk

December 3, 2002



JAMES W. KEENAN  
PRIMARY EXAMINER